IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10825 of 1993

For Approval and Signature:
HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJPIPLA NAGARPALIKA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
NOTICE SERVED for Petitioner(s) : 1,MR ADIL MEHTA for Petitioner(s) : 1,
MS TRUSHA PATEL, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR HS MUNSHAW for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 20/12/2007

ORAL JUDGMENT

1. This is a petition preferred under Article 227 of the Constitution of India by a local authority namely, Rajpipla Nagarpalika. The petitioner –

Nagarpalika is aggrieved by an order passed by the respondent No.1. As per the impugned order, the respondent No.1 doubted the wisdom and assessment of Nagarpalika as regards the needs of its residents, particularly, for roads and consequently, the respondent No.1 set aside the decision and resolution of petitioner – Nagarpalika for constructing / widening road within its limits. Upon being aggrieved by such an order dated 27.1.1993 the petitioner has preferred present petition.

2. The short facts involved in this matter are as follows:-

2.1 In view of the demand as well as the need for 20 fts width road near station road area, necessitated due to common problems associated with growth, the petitioner had decided to construct 20 fts road running north – south area near station road having street No.21 of City Survey No.368.

2.2 Actually, as per the case of the petitioner, the construction of the said road was in comtemplation for last many years and for that purpose, resolutions were also passed in general

body meeting of the petitioner – Nagarpalika.

2.3 Though such was the common demand before the petitioner – Nagarpalika, it appears that the respondent No.3 had certain reservations and objections with reference to the said proposed action of the petitioner – Nagarpalika. Before proceeding further, it is required to be noted that earlier, in pursuance of the demand for constructing the said road, the petitioner – Nagarpalika had undertaken exercise of acquisition of land and demarcation of the roadline. It appears that actually by the said actions of acquisition and demarcation of roadline, the respondent No.3 got aggrieved and he put his individual interests above common interest of public at large and, therefore, made an application dated 26.9.1989 requesting the petitioner – Nagarpalika to cancel its resolution and for dropping the proposed action.

2.4 The petitioner – Nagarpalika has stated that the said application was taken up for consideration by the petitioner – Nagarpalika in its meeting dated 6.11.1989 and the case of the respondent No.3 to the effect that the part of the subject land, i.e. the

land on which the Nagarpalika intended to construct / widen the road, was owned by him and he wanted to construct a house on the said land and, therefore, the proposed action may be dropped, was considered at length and after due consideration, the general body passed resolution No.96 dated 6.11.1989 cancelling the earlier resolution and the decision of constructing / widening the aforesaid road.

2.5 The petitioner – Nagarpalika has further stated that the aforesaid resolution No.96 necessited further actions under Section 146 of the Gujarat Municipalities Act; 1963, which included publication of a notice intimating the residents about discontinuing the roadline and inviting objections from them. Consequently, such a notice was published and in response to such notice, several objections were submitted by the residents of petitioner – Nagarpalika.

2.6 It is pertinent to note that even as per the case of the petitioner – Nagarpalika, the objections were raised on different grounds including the reasons such as pressing need for the said road due

to traffic congestion and parking problems. However, what is more striking is that while raising objections, some of the residents had even reminded the petitioner – Nagarpalika about the incident of fire, which had taken place sometime back in a go-down and it was not possible for the fire fighters to enter the lane and reach the go-down. The said go-down belonged to the respondent No.2. By remanding the petitioner of the said and such other problems which justified the demand for the said road, all those who submitted the objections, tried to impress upon the petitioner that individual interest or objections should not be given precedence.

2.7 In view of such objections received by the petitioner – Nagarpalika, the general body meeting had to be called. Consequently, a general body meeting was held on 13.2.1991 wherein the said objections were taken into consideration and after deliberation, the general body took the decision to continue the roadline and to set aside the resolution No.96 dated 6.11.1989.

2.8 Aggrieved by the said decision of the general

body of the petitioner – Nagarpalika, the respondent No.3 herein preferred an appeal under Section 258 of the Act before the respondent No.2 herein i.e. the Collector. The respondent No.2 after considering the appeal of respondent No.3, informed the petitioner – Nagarpalika to continue the roadline in street No.21 Survey No.368 and held that the said decision / proposal of the petitioner – Nagarpalika did not require any interference. Accordingly, the appeal / application of respondent No.3 was filed and treated as closed by respondent No.2.

2.9 Aggrieved by the said decision of respondent No.2, the respondent No.3 approached respondent No.1 under Section 264 of the Act. The respondent No.1 by order dated 24.1.1992 remanded the matter to the respondent No.2 for rehearing and also directed the petitioner – Nagarpalika to stay the operation of its last resolution until the decision by respondent No.2.

2.10 Respondent No.2, thereafter, fixed hearing and heard the parties on 12.5.1992. After hearing the parties, the respondent No.2 passed an order dated 18.5.1992 holding that considering the circumstances

on record, the roadline was in public notice. He, therefore, dismissed the appeal.

3. Against the said decision, respondent No.3 approached respondent No.1 under the provisions of section 264 of the Act. The respondent No.1, in the said proceedings, observed that the petitioner – Nagarpalika had passed conflicting resolutions and in his view, the construction of the road was not desirable. He, on such grounds, set aside the decision of the petitioner – Nagarpalika and the application preferred by respondent No.3 came to be allowed by the impugned order dated 27.1.1993. As a result, the order of respondent No.2 dated 18.5.1992 was also set aside.

4. Aggrieved by the said decision of respondent No.1, the petitioner – Nagarpalika is before this Court.

5. I have heard Mr. Adil Mehta, Advocate for petitioner – Nagarpalika, Ms. Trusha Patel, AGP for respondent Nos.1 and 2 and Mr. Munshaw, Advocate for respondent No.3.

6. Despite best of his efforts to defend the impugned

order dated 27.1.1993 passed by respondent No.1, Mr. Munshaw, Advocate, could not justify the said order and also could not provide any support of law to the impugned order.

7. It is pertinent to note that while passing the impugned order, respondent No.1 exercised powers under Section 264 of the Act. Therefore, it is appropriate to take into account the provisions of Section 264. Section 264 reads thus,

> ***"In all matters, connected with this Act, the State Government, and Collector shall, respectively, have and exercise the same authority and control over Collectors and their subordinates as in matters of general and revenue administration."***

By virtue of the said provision, the respondent No.1 could have exercised the same powers as he would exercise in matters of general and revenue administration.

7.1 In the process the said authority was required to, in the first instance, address the issues as to whether the Collector had exercised his power under Section 258 arbitrarily or with irregularity and

whether his order was contrary to section 258. Thereafter the said authority also was required to take into consideration the material available on record i.e. the material which was before Collector while passing the order inasmuch as only then it can be determined whether Collector acted arbitrarily or contrary to the dictum of section 258.

7.2 In this backdrop, when we examine the impugned order dated 27.1.1993, it transpires that the respondent No.1 has not addressed the said aspects and issues and has not examined Collector's order from perspective of section 258 and/or has not taken into account the material which was before the petitioner – Nagarpalika and/or the respondent No.2 – Collector e.g. the objections submitted by the residents of the petitioner – Nagarpalika pursuant to the notice issued under Section 146 have not been considered by him.

7.3 Equally so, the respondent No.1 does not appear to have taken into account the fact that the go-down, of which a reference has been made by him in his order dated 27.1.1993, was earlier consumed by fire and that therefore, the reason for which he

found petitioner - Nagarpalika's proposal impracticable, was not at all existing at the time when he passed the impugned order.

7.4 On perusal of the impugned order, it seems that the respondent No.1 has simply gone by submissions made by respondent No.3 which, as noted above, included the non-existing ground of go-down. Even the other ground or reason assigned by respondent No.1 while passing the impugned order viz. so-called contradicting resolutions by petitioner – Nagarpalika is not relevant and is non-germane for exercising powers under Section 264.

7.5 It is pertinent to note that while passing the impugned order, the respondent No.1 has not at all addressed the issue as to whether the reasons or circumstances contemplated under Section 258, on which the respondent No.2 could have set aside the decision and resolution of petitioner – Nagarpalika, exists or not. Without recording the finding that the decision and the order of the respondent No.2 was bad in law and without recording reasons for such a decision, the respondent No.1 ought not to have set aside the decision of respondent No.2.

7.6 Further, the impugned order is also untenable because the respondent No.1 has failed to take into account the material in light of which the petitioner – Nagarpalika took the decision in its general body meeting held on 13.2.1991 which was also approved by respondent No.2 by his order dated 31.12.1991. Since the impugned order proceeds without having regard to the said material, it is untenable inasmuch as it is passed disregarding material evidence on record. Further, before passing the impugned order, the respondent No.1 also ought to have posed a question to the effect that who could be a better judge of the requirements of residents then the petitioner – Nagarpalika. The respondent No.1 has passed the impugned order without considering the aforesaid aspects and more particularly, the vital evidence on record, and he has exercised his authority irrationally which has vitiated the order and it is also obvious that the said order suffers from non-application of mind and is passed in total disregard to the relevant material. The respondent No.1 also could not have substituted his own views and decision in place of petitioner Nagarpalika.

8. The impugned order is, thus, untenable and the same deserves to be set aside. Accordingly, the said order is set aside. Since the order dated 21.7.1993 passed by the respondent No.1 is set aside, ordinarily the order dated 18.5.1992 / 21.5.1992 passed by the respondent No.2 would stand revived, however, that would eclipse the application of respondent No.3 against the order dated 18.5.1992 / 21.5.1992. Thus, so as to avoid such eventuality, the matter is, though it would result in some delay, remanded to respondent No.1 with a direction to decide the application dated 10.6.1992 of respondent No.3 as early as possible and not later than 15.2.2008.

9. Accordingly, petition is allowed. Impugned order dated 27.1.1993 is set aside. Rule made absolute. No order as to costs.

[K.M.Thaker, J.]

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